

Patrick J. Neligan, Jr.  
Texas State Bar No. 14866000  
Seymour Roberts, Jr.  
Texas State Bar No. 17019150  
**NELIGAN FOLEY LLP**  
325 N. St. Paul, Suite 3600  
Dallas, Texas 75201  
Telephone: (214) 840-5300  
Facsimile: (214) 840-5301  
**COUNSEL FOR THE DEBTOR**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE: §  
CRAFT INTERNATIONAL, LLC, § CASE NO. 14-32605-BJH-11  
DEBTOR. §  
§ HEARING DATE: February 17, 2015  
§ HEARING TIME: 2:15 p.m.

**FIRST AMENDED MOTION AND BRIEF FOR ORDER  
DISMISSING BANKRUPTCY CASE**

Craft International, LLC (“Craft” or the “Debtor”), the debtor and debtor in possession in the above-captioned bankruptcy case (the “Bankruptcy Case”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”),<sup>1</sup> files this motion and brief (the “Motion”) for an order dismissing the Bankruptcy Case under § 1112(b) and, in support, states as follows:

## **I. Jurisdiction and Venue**

1. Petition Date. On May 30, 2014 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, initiating the Bankruptcy Case.

2. Continued Operations. The filing of the petition constituted an order for relief under § 301 and, since that filing, under §§ 1107 and 1108, the Debtor has continued in

<sup>1</sup> All of the section references contained in this Motion will refer to the Bankruptcy Code, unless otherwise indicated.

possession and control of assets and property and has continued to operate its business and manage its affairs.

3. Jurisdiction. This Court has jurisdiction to hear this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue. Venue is proper before this Court in this district under 28 U.S.C. §§ 1408 and 1409.

5. Statutory Predicate. The statutory predicate for the relief requested in this Motion is § 1112(b).

6. Standing. Although the request for dismissal, and the necessary attendant allegations under §1112(b), look like the type of an argument that would ordinarily be made by a creditor or the United States Trustee (the “UST”), a motion to dismiss under §1112(b) is entitled to be made by any party in interest, and that includes a debtor. Under §1109(b), a party in interest, which includes the debtor, may raise and appear and be heard on any issue in a case under chapter 11 and this, by definition, includes a motion to dismiss under §1112(b)<sup>2</sup>. In fact, the Court is entitled to dismiss a chapter 11 case sua sponte.<sup>3</sup>

## II. Factual Background

### A. **The Debtor’s Business Operations**

7. The Debtor is a consulting and training services provider offering a wide range of services and training to federal, state and local customers. The Debtor specializes in providing turnkey mission solutions to ensure complete operation success. The Debtor consults with and trains our nation’s Special Operators and First Responders. The Debtor was founded by a mix of

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<sup>2</sup> In re Optinrealbig.com, 345 B.R. 277, 282-283 (Bankr. D.Colo. 2006) (“Optinrealbig”). In re Products International Company, 395 B.R. 101, 107 (Bankr. D.Ariz. 2008) (“Products International”).

<sup>3</sup> In re Starmark Clinics L.P., 388 B.R. 729, 736 (Bankr. S.D.Tex. 2008) (“Starmark”).

Special Operations Forces Operators and successful businessmen. The Debtor is a leader in integrated training and security solutions for operations in austere environments and situations.

8. The Debtor's training procedures currently include the following:

- **Military Training.** The military training available at Craft can be customized to suit the needs of the customer including, without limitation, large-scale pre-deployment training or specific instruction in one particular skill. Students can be trained at various facilities (which Craft pays to use, but does not own). Craft can facilitate military training at other unique locations and handle all logistical aspects of a unit to conduct its own military training. Craft understands the importance of realistic, intense training and preparation; and understands that every unit's needs are different. Craft works to develop a program that fits the needs and responsibilities of each of its customers, giving them the tools that they will need in combat. In addition to customizable courses, Craft offers several courses designed specifically for military operators such as sniper courses, counter terrorist courses, close quarter combat courses, specialty courses, and driving courses.
- **Law Enforcement.** The law enforcement training at Craft is based upon Craft's vast network of instructors who have extensive backgrounds in a variety of law enforcement related subjects. Many of Craft's instructors have a combination of military, law enforcement and defense contractor experience to draw upon in order to support the curriculum anecdotally and deliver exceptional training. Craft recognizes the importance of providing law enforcement officers with comprehensive training to address a wide array of increasingly dangerous and sophisticated threats. Many of Craft's staff have extensive law enforcement experience and have trained various police and SWAT units around the country. In addition to customizable courses, Craft offers several courses designed ideally for law enforcement officers such as sniper courses, and large caliber courses.
- **Combative Training Program.** The object of Craft's combative training is to help the customer learn how to create tactical transitions and solutions to and from his or her firearm. Each operator will understand his or her limitations and natural habits and begin to work on the solutions that will create the necessary time and distance needed to deploy the firearm. Each student will learn the science of behavior and how to recognize lethal intent within his or her adversary. This is taught under Craft's exclusive Tacflow™ Method. All disciplines from firearm to hands-on technology are learned. The Tacflow™ Method is the blending of the old technologies of Kali and Silat (Filipino, Indonesian and Malaysian bladed and empty handed combatives) with the weapons that law enforcement and military find themselves fighting with today. The technology that is taught is strictly for LE, MIL, and DOD personnel only. Courses cover combatives in the close quarters environment with an intent to end the engagement by creating time, distance and opportunity to maintain the tactical flow. Through drills that easily translate from the student's pre-existing shooting and movement skills, the student will be able to effectively learn how to move better in the "hands-on" engagement.

- **Civilian and Corporate Training.** Craft offers training to law abiding civilians looking to increase their own self-reliance to protect themselves or their families, or to increase their long range rifle skills as sportsmen. Craft's civilian training events are run at Rough Creek Lodge & Resort, which is a Five Star resort on 11,000 acres outside of Glen Rose, Texas. The range facilities include a 1,300 yard range, a 100 yard carbine range with an Action Target system and a 50 yard range for pistol and carbine work. Class subject matters include precision marksman, defensive pistol, defensive carbine, business traveler awareness, and home invasion.
- **Government Contracting.** Craft is a Tactical Training Provider and offers a wide range of services and training to its Federal Customers. This tactical training includes: (a) weapons training (e.g., pistol, carbine, sniper, combatives); (b) tactical medical training, including LTT; (c) tactical driving; (d) CONOPS and battle space integration; and (e) security (e.g., PSD and facility security).

## B. The Lawsuits

9. The Debtor and various related parties are involved in separate lawsuits. One lawsuit is a state court action filed by Taya Kyle ("Taya") on December 23, 2013, Taya Kyle a/k/a Mrs. Chris Kyle v. Craft International LLC, Craft International Risk Management, LLC, Steven Young and Bo French, Cause No. DC-13-14996, in the 14<sup>th</sup> Judicial District Court of Dallas County (the "D&O Action"). In the D&O Action, Taya sued the Debtor's officers and directors, on her own behalf and derivatively on behalf of the Debtor for, among other things, breach of fiduciary duty, fraud, conversion and civil theft and civil conspiracy. The defendants answered and contested that action. The filing of the Bankruptcy Case automatically stayed the D&O Action under § 362(a).

10. Another lawsuit is an adversary proceeding in this Bankruptcy Case filed by Taya on August 27, 2014 against the Debtor for the unauthorized use of Chris Kyle's name, likeness and image (the "Adversary Proceeding"), Taya Kyle v. Craft International, LLC, Adversary No. 14-03115.

**C. Proposed Settlement of the Lawsuits**

11. The parties to the Lawsuits agreed to enter into a Settlement Agreement (the “Settlement Agreement”) to resolve the Lawsuits. A copy of the Settlement Agreement is attached as **Exhibit A**. See also the Agreed Joint Motion to Approve Settlement Pursuant to Federal Rule of Bankruptcy Procedure 9019 [D.E. 55] that was filed on January 16, 2015.

**III. Relief Requested**

13. The Settlement Agreement calls for the dismissal of the Bankruptcy Case, which is the genesis of this Motion.

**IV. Basis For Relief**

**A. Introduction**

14. Unless there are “unusual circumstances” that are specifically identified by the court that establish that dismissal or conversion is not in the best interest of creditors and the estate, on request of a party-in-interest, and after notice and a hearing, the court is required to dismiss or convert a bankruptcy case, whichever is in the best interest of creditors and the estate, if the movant establishes cause.<sup>4</sup> The purpose of § 1112(b)(1) is to “preserve estate assets by preventing the debtor in possession from gambling on the enterprise at the creditors’ expense when there is no hope of rehabilitation.”<sup>5</sup>

15. If a chapter 11 case is unable to reorganize under the framework of the Bankruptcy Code, then there is no longer any point in continuing to use assets of the estate to pay administrative expenses and delay creditors from exercising their rights under applicable non-bankruptcy law.

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<sup>4</sup> Section 1112(b)(1).

<sup>5</sup> Matter of Vallambrosa Holdings, L.L.C., 419 B.R. 81, 88 (Bankr. S.D.Ga. 2009) (“Vallambrosa”), citing Loop Corp. v. United States Trustee, 379 F.3d 511, 516 (8<sup>th</sup> Cir. 2004), cert. denied, 543 U.S. 1055 (2005).

## B. Cause Exists to Dismiss the Bankruptcy Case

16. For dismissal to be granted, the court must first decide whether “cause” exists for the requested dismissal or conversion. If the court does find that such cause is present, the court must then determine whether dismissal or conversion is in the best interests of the creditors and the bankruptcy estate.<sup>6</sup> Section 1112(b)(4) provides a list of examples for what constitutes cause to dismiss or convert a bankruptcy case. This list is considered to be illustrative, and not exhaustive or exclusive.<sup>7</sup> The word “cause” is supposed to be flexible so that courts can take into account other factors that arise in any particular case, and use their equitable powers to reach the right result.<sup>8</sup> The moving party is not required to show each and every cause factor.<sup>9</sup> Only one factor needs to be proved.<sup>10</sup> In addition to those factors enumerated in Section 1112(b)(4), bankruptcy courts have held that the following factors also constitute the necessary cause for dismissal or conversion under that provision: (a) settlement with a litigation nemesis<sup>11</sup>; (b) a material change in the debtor’s circumstances that results in a scenario where a reorganization under the Bankruptcy Code no longer serves the interest of the debtor or its creditors<sup>12</sup>; (c) where a debtor tries to use the provisions of the Bankruptcy Code to gain an unfair advantage in a two

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<sup>6</sup> In re OptInRealBig, 345 B.R. 277, 282 (Bankr. D.Colo. 2006) (“OptInRealBig”). In re Hampton Hotel Investors, L.P., 270 B.R. 346, 358-359 (Bankr. S.D.N.Y. 2001) (“Hampton”). See also, Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.), 14 F.3d 240, 242 (4<sup>th</sup> Cir. 1994) (“Rollex”).

<sup>7</sup> In Re Miell, 419 B.R. 357, 366 (Bankr. M.D.Iowa 2009) (“Miell”). In Re Pittsfield Weaving Company, 393 B.R. 271, 274 (Bankr. D.N.H. 2008) (“Pittsfield”). In re Wells, 227 B.R. 553, 560 (Bankr. M.D.Fla. 1998) (“Wells”). In re Young, 409 B.R. 508, 512 (Bankr. D.Idaho 2009) (“Young”).

<sup>8</sup> Wells, 227 B.R. 560, citing In re Maricamp Square Associates, 139 B.R. 554, 557 (Bankr. M.D.Fla 1992). Hampton, 270 B. R. at 358. In re Products International Co., 395 B.R. 101, 107 (Bankr. D.Ariz 2008) (“Products International”). Miell, 419 B.R. at 366. In Re Federal Roofing Co., Inc., 205 B.R. 638, 641 (Bankr. N.D.Ala. 1996) (“Federal Roofing”).

<sup>9</sup> Mielle, 419 B.R. at 366. Products International, 395 B.R. at 110.

<sup>10</sup> Federal Roofing, 205 B.R. at 641.

<sup>11</sup> OptInRealBig, 345 B.R. at 283.

<sup>12</sup> OptInRealBig, 345 B.R. at 283.

party dispute<sup>13</sup>; (d) negative cash flow<sup>14</sup>; and (e) the commission of a crime where the components of fraud and dishonesty are present.<sup>15</sup>

17. There exists the necessary cause here which warrants the dismissal of this Bankruptcy Case. The Settlement Agreement incorporates a settlement between the Debtor and its litigation nemesis, Taya whereby the two existing lawsuits between them, the D&O Action and the Adversary Proceeding, will be finally settled. In addition, consummation of the Settlement Agreement will result in a scenario where a reorganization under Bankruptcy Code will be impossible because the Debtor will no longer own its intellectual property, its most valuable asset. The intellectual property will be owned by Taya.

#### **C. There are no Unusual Circumstances that Justify Denying this Motion**

18. Once cause has been shown to dismiss a bankruptcy case under Section 1112(b), the next step is to determine whether there are any unusual circumstances that would negate dismissal.<sup>16</sup>

19. These unusual circumstances can only be those that are specifically identified by the Court.<sup>17</sup> Although Section 1112(b) does not provide a definition for such “unusual circumstances,” courts have held that that phrase means conditions that are uncommon in chapter 11 cases.<sup>18</sup>

20. There are no unusual circumstances under Section 1112(b)(1) and (2) which would act to neutralize the cause factors and prevent this Court from dismissing this Bankruptcy

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<sup>13</sup> In re Starmark Clinics, LP, 388 B.R. 729, 736 (Bankr. S.D.Tex. 2008).

<sup>14</sup> Mielle, 419 B.R. at 366.

<sup>15</sup> Mielle, 419 B.R. at 366.

<sup>16</sup> Section 1112(b)(1). Pittsfield, 393 B.R. 274. Mielle, 419 B.R. at 367. In re Wahlie, 417 B.R. 8, 13 (Bankr. N.D.Ohio 2009) (“Wahlie”).

<sup>17</sup> Section 1112(b)(1). Products International, 395 B.R. at 108.

<sup>18</sup> Pittsfield, 393 B.R. at 274-275. Products International, 395 B.R. at 108-109. Mielle, 419 B.R. at 367. Wahlie, 417 B.R. at 13.

Case. Settlement with its litigation nemesis is a big step forward for the Debtor and justifies the requested dismissal.

**D. Dismissal of the Bankruptcy Case is in the Best Interest of the Estate and its Creditors**

21. After the requisite cause has been shown under Section 1112(b) and there has been a determination that there are no unusual circumstances that would negate the relief requested, a court is then faced with the decision of whether to dismiss or convert the bankruptcy case. The vehicle for making that decision is the test for what is in the best interests of the creditors and the estate.<sup>19</sup>

22. It will be in the best interests of the unsecured creditors for the Bankruptcy Case to be dismissed. Steve Young (“Mr. Young”), the Debtor’s Managing Member and President, is in the process of acquiring all of the Debtor’s unsecured claims. The Debtor has forty (40) unsecured creditors, including thirty-six (36) Noteholders. As of the timing of the filing of the first version of this Motion, twenty-eight (28) of the Debtor’s unsecured creditors entered into assignment agreements transferring their unsecured claims against the Debtor to Mr. Young; nine (9) of the Debtor’s unsecured creditors verbally committed to Mr. Young that they would enter into similar assignment agreements; and one (1) unsecured creditor of the Debtor gave Mr. Young an e-mail commitment to do the same. There are only two (2) of the Debtor’s unsecured creditors that Mr. Young has contacted but has not heard back from yet. Of the approximately \$4 million owed to all of the unsecured creditors, they are owed approximately \$78,000. Mr. Young anticipates that by the time of the hearing on this Motion, all of the Debtor’s unsecured creditors will have entered into assignment agreements assigning their unsecured claims to Mr.

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<sup>19</sup> Products International, 395 B.R. at 108 n. 7.

Young. With this in mind, it is fair to say that the unsecured creditors are in favor of this Court granting this Motion.

23. In addition, all of the UST fees will be paid in full upon dismissal.
24. There is simply no reason for the Debtor to continue with the Bankruptcy Case, and this Bankruptcy Case should be dismissed.

**V. Prayer**

The Debtor prays that this Court grant this Motion by entering an order that: (a) dismisses the Bankruptcy Case, as requested herein; and (b) awards the Debtor such other and further relief, special or general, at law or in equity, as this Court may deem just and proper.

Dated: February 2, 2015

Respectfully submitted,

**NELIGAN FOLEY LLP**

By: /s/ Patrick J. Neligan, Jr.

Patrick J. Neligan, Jr.  
Texas State Bar No. 14866000  
[pneligan@neliganlaw.com](mailto:pneligan@neliganlaw.com)  
Seymour Roberts, Jr.  
Texas State Bar No. 17019150  
[sroberts@neliganlaw.com](mailto:sroberts@neliganlaw.com)

325 N. St. Paul, Suite 3600  
Dallas, Texas 75201  
Telephone: (214) 840-5300  
Facsimile: (214) 840-5301

**COUNSEL FOR THE DEBTOR**

**Certificate of Service**

I hereby certify that on the 2<sup>nd</sup> day of February, 2015 a true and correct copy of the foregoing was served via the Court's ECF notification system and on each party listed on the attached Matrix by regular mail.

/s/ Seymour Roberts, Jr.  
Seymour Roberts, Jr.

5.11, Inc.  
4300 Spyres Way  
Modesto, CA 95356

AEM Partners II, LP  
Attn: Ardon Moore  
201 Main Street, Suite 3200  
Fort Worth, TX 76102

AL CRAFT LLC  
Attn: Alex Lamond  
Miramar Plaza Building, Suite 400  
Ave Ponce de Leon #954  
San Juan, Puerto Rico 00907

American Express  
PO Box 650448  
Dallas, TX 75265-0448

Andrew Alexander  
6147 Lakeshore Drive  
Dallas, TX 75214

Armer & Smith Capital Group LLC  
Attn: Kevin Smith  
7109 Greenshores Drive  
Austin, TX 78730

Bob Lilly Professional Promotions  
12850 Spurling Road  
Dallas, TX 75230

Bray Family Trust  
Attn: Benny Bray  
4012 Glenwick Lane  
Dallas, TX 75205

Charles Fitzgerald  
c/o V3 Capital Management LP  
477 Madison Avenue, Suite 320  
New York, NY 10022

Chris Pittman  
4078 Creekside Drive  
Dallas, TX 75229

Christopher E. Kirkpatrick  
5839 Meadowcrest Drive  
Dallas, TX 75230

Colonneta Family Partners I  
5435 Park Lane  
Dallas, TX 75220

Colt Ventures Ltd.  
Attn: Darren Blanton  
2101 Cedar Springs Road, Suite 1230  
Dallas, TX 75201

Daniel S. Loeb  
390 Park Avenue, 18<sup>th</sup> Floor  
New York, NY 10022

David Feherty  
6422 Prestonshire Lane  
Dallas, TX 75225

Derrick Hunt  
3325 Boggett Ct.  
Southlake, TX 76092

Devin Phillips  
4119 Briargrove Lane  
Dallas, TX 75287

Double Eagle Capital Management LP  
909 Lake Carolyn Pkwy Suite 1825  
Irving, TX 75039

Edward Deegan  
2101 Carleton Avenue  
Fort Worth, TX 76107

Edward Morales  
23219 N. 25<sup>th</sup> Street  
Phoenix, AZ 85024

Fred C. Pederson  
Little Pederson Fankhauser LLP  
901 Main Street, Suite 4110  
Dallas, TX 75202

Fred W. Brown  
8323 S.W. Frwy. Suite 475  
Houston, TX 77074

Freeman Capital Ltd.  
Attn: Brandon Freeman  
100 Crescent Court, Suite 1450  
Dallas, TX 75201

Gerrit M. Pronske  
Jason P. Kathman  
Pronske Goolsby Katham  
2200 Ross Avenue, Suite 5350  
Dallas, TX 75201

Hayman Partners LP  
Attn: Jeff Knowlton  
2101 Cedar Springs Road, Suite 1400  
Dallas, TX 75201

Hunter Brous  
1221 South Congress Avenue, Apt 421  
Austin, TX 78704

Internal Revenue Service  
Special Procedures Branch  
1100 Commerce Street, MC 5020 DAL  
Dallas, TX 75242-1496

J. David Gillikin  
4731 Wildwood Road  
Dallas, TX 75209

Jeffrey Roger Staubach Trust  
5505 Nakoma Drive  
Dallas, TX 75209

JL CRAFT LLC  
Attn: Joseph A. LaNasa III  
54 Byram Drive  
Greenwich, CT 06830

Johnny D. Showalter  
6215 Parkside Drive  
Arlington, TX 76001

John Walding  
14610 Riverside Drive  
Little Elm, TX 75068

Joshua Douglas White  
5726 Preston Haven  
Dallas, TX 75230

Kelly Canterbury  
2315 Calmont Drive  
Arlington, TX 76001

Kevin Lacz  
1320 Bridgton Cape Ct.  
Winston Salem, NC 27127

Lawrence J. Freidman  
Shauna A. Izadi  
Friedman & Feiger  
5301 Spring Valley Road, Suite 200  
Dallas, TX 75254

Mark Lang  
2817 Daniel Creek  
Mesquite, TX 75181

MC3B LLC  
Attn: Mike Burress  
5430 LBJ Freeway, Suite 1090  
Dallas, TX 75240

Mai Armstrong Brous  
4426 Bluffview Blvd.  
Dallas, TX 75209

Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

Quail County Construction Co. Inc.  
Attn: Tim Allen  
2495 N US Highway 385  
Andrews, TX 79714

Randy Dehay  
5460 Ranch Road 32  
Blanco, TX 78606

Ray's Hardware & Sporting Goods  
730 Singleton Blvd.  
Dallas, TX 75212

RBH Ventures Ltd.  
Attn: Bradley Hicks  
100 Crescent Court, Suite 1200  
Dallas, TX 75201

Red Gap Communications  
504 Main Street  
Fort Worth, TX 76102

Rigo Durazo  
23219 N. 25<sup>th</sup> Street  
Phoenix, AZ 85024

Roger T. Staubach  
5242 Ravine Drive  
Dallas, TX 75220

RRP Training LLC  
Attn: Raymon Hunt  
600 Milam Court  
Irving, TX 75038

Scot & Catherine J. Phillips  
3601 Wentwood  
Dallas, TX 75225

Securities and Exchange Commission  
175 West Jackson, Suite 900  
Chicago, IL 60614

Shannon Rogers  
23219 N. 25<sup>th</sup> Street  
Phoenix, AZ 85024

State Comptroller of Public Accounts  
Revenue Accounting Division –  
Bankruptcy Section  
PO Box 13528  
Austin, TX 78711

Taya Kyle  
P.O. Box 1337  
Midlothian, TX 76065

Texas Attorney General's Office  
Bankruptcy-Collections Division  
PO Box 12548  
Austin, TX 78711-2548

Texas State Comptroller  
PO Box 149348  
Austin, TX 78714-9348

The Get Good Trust  
Attn: Jim Dondero  
300 Crescent Court, Suite 700  
Dallas, TX 75201

Toby Neugebauer  
3700 Winding Creek Drive  
Austin, TX 78735

Todd Groves  
6207 Glendora Avenue  
Dallas, TX 75230

TOH Jr Ventures Ltd  
Attn: Thomas O. Hicks, Jr.  
100 Crescent Court, Suite 1200  
Dallas, TX 75201

Trinity Equity Partners I LP  
Attn: Wil VanLoh  
1401 McKinney Street, Suite 2700  
Houston, TX 77010

Utopia Investments Ltd.  
Attn: Aaron Kozmetsky  
4117 Windsor Pkwy  
Dallas, TX 75205

William L. Wallander  
Katherine Drell Grissell  
Vinson & Elkins  
2001 Ross Avenue, Suite 3700  
Dallas, TX 75201-2975

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